

David W. Newman (USB #15901)
Assistant United States Trustee
Melinda P. Willden (USB #8533)
UNITED STATES DEPARTMENT OF JUSTICE
Office of the United States Trustee
Washington Federal Bank Building
405 South Main Street, Suite 300
Salt Lake City, UT 84111
Telephone: (801) 524-5734
Facsimile: (801) 524-5628
E-mail: Melinda.Willden@usdoj.gov

Attorneys for Patrick S. Layng
United States Trustee, Region 19

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH**

In re:	Bankruptcy Case No. 22-23480
PEAK THEORY INC.,	Chapter 11
Debtor.	Hon. Joel T. Marker

**THE UNITED STATES TRUSTEE’S LIMITED OBJECTION TO DEBTOR’S
MOTION REQUESTING ENTRY OF ORDER (A) AUTHORIZING THE SALE OF
THE DEBTOR’S ASSETS TO PURCHASER FREE AND CLEAR OF ALL LIENS,
CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; AND (B) WAIVING THE
14-DAY STAY OTHERWISE APPLICABLE UNDER BANKRUPTCY RULES 6004
AND 6006**

The United States Trustee files this limited objection to the Debtor’s Motion Requesting Entry of Order (A) Authorizing the Sale of the Debtor’s Assets to Purchaser Free and Clear of All Liens, Claims, Encumbrances, and Other Interests; and (B) Waiving the 14-Day Stay Otherwise Applicable Under Bankruptcy Rules 6004 and 6006, filed at Dkt. #47 (the “Motion”) and requests that the Court revise the proposed order granting the Motion to include language

requiring the proceeds from the sale to be deposited in a properly collateralized Debtor-In-Possession bank account (“DIP Account”) that meets the requirements of 11 U.S.C. § 345.

STATEMENT OF FACTS

1. All funds of the bankruptcy estate must be properly invested in accordance with 11 U.S.C. § 345. Bank account deposits that are fully insured by the Federal Deposit Insurance Corporation meet the requirements of 11 U.S.C. § 345. The FDIC insures amounts up to \$250,000.
2. Bank accounts with an entity that has posted a surety bond in favor of the United States, or pledged securities of the kind specified in 31 U.S.C. § 9303, to secure the funds invested or on deposit also meet the requirements of 11 U.S.C. § 345. This secures funds that exceed \$250,000.¹
3. The Debtor filed a voluntary Chapter 11 bankruptcy petition on September 5, 2022 and elected to proceed under Subchapter V.
4. The Debtor was a debtor-in-possession within the meaning of 11 U.S.C. § 1107 and thus was required to deposit funds of the bankruptcy estate into a bank account that meets the requirements of 11 U.S.C. § 345.
5. At the Initial Debtor Interview conducted on September 15, 2022, the Debtor was instructed to open a DIP account.
6. At the meeting of creditors conducted on October 4, 2022 (“341 Meeting”), the U.S. Trustee questioned the Debtor about its progress in opening a DIP account. The Debtor

¹ These requirements are explained to the Debtor in the Operating Guidelines and Reporting Requirements of the United States Trustee, available at https://www.justice.gov/ust-regions-r19/files/ogrr_slc.pdf/download.

explained the delays it was dealing with and reaffirmed its intention to open a DIP account.

7. On or about December 21, 2022, the Debtor assured the U.S. Trustee by email that a DIP account had been opened at Key Bank and the DIP account bank statement would be attached to the next Monthly Operating Report (“MOR”).
8. The November 2022 MOR included a bank statement for Key Bank account ending in 8030. The bank statement showed the name of the Debtor, the Debtor’s principal, and the bankruptcy case number. *See* Exhibit A [MOR at dkt #40]. The bank statement does not contain the words “Debtor-In-Possession.”
9. The U.S. Trustee receives a quarterly report from all eligible banking institutions listing the DIP accounts currently open. The quarterly report for Key Bank does not include the Debtor’s account ending in 8030.
10. The Debtor does not currently have a properly collateralized DIP Account.
11. The Motion states that the purchase price for the assets is \$529,780. Of that amount, \$400,000 will be paid in a lump sum at closing, with the remainder coming in twenty-four monthly installments.
12. The \$400,000 lump sum payment exceeds the FDIC insured limit of \$250,000.
13. The banking industry is currently experiencing instability. Funds of the bankruptcy estate should be deposited only in bank accounts that are fully secured and collateralized to avoid any risk to the bankruptcy estate and its creditors.
14. The U.S. Trustee requests that the order approving the Motion not be signed until the Debtor has presented to the U.S. Trustee proof, in a form approved by the U.S. Trustee,

of a properly collateralized DIP Account.

15. The U.S. Trustee requests that the following language be added to the proposed order approving the Motion:

- a. The funds from the Sale received on the Closing Date, estimated to be \$400,000, shall be deposited into a Debtor-In-Possession bank account that meets the requirements of 11 U.S.C. § 345. Monthly payments shall also be deposited into the Debtor-In-Possession bank account until this bankruptcy case is closed.

16. The U.S. Trustee has communicated these concerns to the Debtor, and the Debtor has expressed a willingness to resolve these issues.

Date: March 22, 2023

UNITED STATES TRUSTEE
Patrick S. Layng

By: /s/ Melinda P. Willden
Melinda P. Willden
Attorney for the United States Trustee

CERTIFICATE OF SERVICE BY ELECTRONIC NOTICE (CM/ECF)

I hereby certify that on March 22, 2023, I caused the foregoing document to be electronically filed with the United States Bankruptcy Court for the District of Utah by using the CM/ECF system. I further certify that the parties of record in this case, as identified below, are registered CM/ECF users.

- **Darren B. Neilson** dneilson@parsonsbehle.com
- **Brian M. Rothschild** brothschild@parsonsbehle.com, ecf@parsonsbehle.com; docket@parsonsbehle.com
- **Nicholas R. Russell** nrussell@roruss.com, paralegal@roruss.com; rorusslaw@gmail.com; srogers@roruss.com; la@roruss.com; r47264@notify.bestcase.com
- **D. Ray Strong tr** rstrong@thinkbrg.com, UT30@ecfcbis.com; drstrong@ecf.axosfs.com
- **United States Trustee** USTPRegion19.SK.ECF@usdoj.gov
- **Melinda Willden tr** melinda.willden@usdoj.gov, Lindsey.Huston@usdoj.gov; James.Gee@usdoj.gov; Rinehart.Peshell@usdoj.gov; Rachell e.D.Armstrong@usdoj.gov; Brittany.Eichorn@usdoj.gov

CERTIFICATE OF SERVICE BY MAIL OR OTHER MEANS

I hereby certify that on March 22, 2023, I caused a copy of the foregoing document to be uploaded to BMC Group, Inc., an approved bankruptcy notice provider, to be sent by first class mail to the parties listed below. Pursuant to the BMC Group, Inc.'s terms of service, documents uploaded for service will be mailed out within one business day of being uploaded.

Mail Service: First-class U.S. mail, postage pre-paid, addressed to:

Jon Allen
Ampleo
3300 Triumph Blvd, Suite 100
Lehi, UT 84043

CFO Solutions, LLC dba Amplo
13601 W McMillan Rd
#102 PMB 320
Boise, ID 83713

Quiet Light Brokerage, Inc.
631 Brawley School Road, Suite 300
Mooreville, NC 28117

Date: March 22, 2023

/s/ Melinda P. Willden
Melinda P. Willden

Fill in this information to identify the case:

Debtor Name Peak Theory Inc.

United States Bankruptcy Court for the: District of Utah

Case number: 22-23480☐ Check if this is an amended filing

Official Form 425C

Monthly Operating Report for Small Business Under Chapter 11

12/17

Month: NovemberDate report filed: 09/05/2022
MM / DD / YYYYLine of business: ClothingNAISC code: 8110

In accordance with title 28, section 1746, of the United States Code, I declare under penalty of perjury that I have examined the following small business monthly operating report and the accompanying attachments and, to the best of my knowledge, these documents are true, correct, and complete.

Responsible party: /s/ Zac ParkOriginal signature of responsible party: Dane ClarkPrinted name of responsible party: Dane Clark

1. Questionnaire

Answer all questions on behalf of the debtor for the period covered by this report, unless otherwise indicated.

Yes	No	N/A
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If you answer **No** to any of the questions in lines 1-9, attach an explanation and label it **Exhibit A**.

- | | | | |
|--|-------------------------------------|-------------------------------------|-------------------------------------|
| 1. Did the business operate during the entire reporting period? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Do you plan to continue to operate the business next month? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Have you paid all of your bills on time? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 4. Did you pay your employees on time? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 5. Have you deposited all the receipts for your business into debtor in possession (DIP) accounts? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Have you timely filed your tax returns and paid all of your taxes? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Have you timely filed all other required government filings? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Are you current on your quarterly fee payments to the U.S. Trustee or Bankruptcy Administrator? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 9. Have you timely paid all of your insurance premiums? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

If you answer **Yes** to any of the questions in lines 10-18, attach an explanation and label it **Exhibit B**.

- | | | | |
|---|-------------------------------------|-------------------------------------|--------------------------|
| 10. Do you have any bank accounts open other than the DIP accounts? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 11. Have you sold any assets other than inventory? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 12. Have you sold or transferred any assets or provided services to anyone related to the DIP in any way? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 13. Did any insurance company cancel your policy? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 14. Did you have any unusual or significant unanticipated expenses? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 15. Have you borrowed money from anyone or has anyone made any payments on your behalf? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 16. Has anyone made an investment in your business? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Debtor Name Peak Theory Inc.Case number 22-23480

17. Have you paid any bills you owed before you filed bankruptcy?

☐ ☒ ☐

18. Have you allowed any checks to clear the bank that were issued before you filed bankruptcy?

☐ ☒ ☐**2. Summary of Cash Activity for All Accounts****19. Total opening balance of all accounts**\$ 0.00

This amount must equal what you reported as the cash on hand at the end of the month in the previous month. If this is your first report, report the total cash on hand as of the date of the filing of this case.

20. Total cash receipts

Attach a listing of all cash received for the month and label it *Exhibit C*. Include all cash received even if you have not deposited it at the bank, collections on receivables, credit card deposits, cash received from other parties, or loans, gifts, or payments made by other parties on your behalf. Do not attach bank statements in lieu of *Exhibit C*.

Report the total from *Exhibit C* here.\$ 3.00**21. Total cash disbursements**

Attach a listing of all payments you made in the month and label it *Exhibit D*. List the date paid, payee, purpose, and amount. Include all cash payments, debit card transactions, checks issued even if they have not cleared the bank, outstanding checks issued before the bankruptcy was filed that were allowed to clear this month, and payments made by other parties on your behalf. Do not attach bank statements in lieu of *Exhibit D*.

Report the total from *Exhibit D* here.- \$ 3.00**22. Net cash flow**

Subtract line 21 from line 20 and report the result here.

This amount may be different from what you may have calculated as *net profit*.+ \$ 0.00**23. Cash on hand at the end of the month**

Add line 22 + line 19. Report the result here.

Report this figure as the *cash on hand at the beginning of the month* on your next operating report.

This amount may not match your bank account balance because you may have outstanding checks that have not cleared the bank or deposits in transit.

= \$ 0.00**3. Unpaid Bills**

Attach a list of all debts (including taxes) which you have incurred since the date you filed bankruptcy but have not paid. Label it *Exhibit E*. Include the date the debt was incurred, who is owed the money, the purpose of the debt, and when the debt is due. Report the total from *Exhibit E* here.

24. Total payables\$ 0.00*(Exhibit E)*

Debtor Name Peak Theory Inc.Case number 22-23480**4. Money Owed to You**

Attach a list of all amounts owed to you by your customers for work you have done or merchandise you have sold. Include amounts owed to you both before, and after you filed bankruptcy. Label it *Exhibit F*. Identify who owes you money, how much is owed, and when payment is due. Report the total from *Exhibit F* here.

25. **Total receivables** \$ 0.00
(*Exhibit F*)

5. Employees

26. What was the number of employees when the case was filed? 1
27. What is the number of employees as of the date of this monthly report? 1

6. Professional Fees

28. How much have you paid this month in professional fees related to this bankruptcy case? \$ 0.00
29. How much have you paid in professional fees related to this bankruptcy case since the case was filed? \$ 0.00
30. How much have you paid this month in other professional fees? \$ 0.00
31. How much have you paid in total other professional fees since filing the case? \$ 0.00

7. Projections

Compare your actual cash receipts and disbursements to what you projected in the previous month. Projected figures in the first month should match those provided at the initial debtor interview, if any.

	Column A		Column B		Column C
	Projected	—	Actual	=	Difference
	Copy lines 35-37 from the previous month's report.		Copy lines 20-22 of this report.		Subtract Column B from Column A.
32. Cash receipts	\$ <u>0.00</u>	—	\$ <u>3.00</u>	=	\$ <u>3.00</u>
33. Cash disbursements	\$ <u>0.00</u>	—	\$ <u>3.00</u>	=	\$ <u>3.00</u>
34. Net cash flow	\$ <u>0.00</u>	—	\$ <u>0.00</u>	=	\$ <u>0.00</u>
35. Total projected cash receipts for the next month:					\$ <u>0.00</u>
36. Total projected cash disbursements for the next month:				—	\$ <u>0.00</u>
37. Total projected net cash flow for the next month:				=	\$ <u>0.00</u>

Debtor Name Peak Theory Inc.

Case number 22-23480

8. Additional Information

If available, check the box to the left and attach copies of the following documents.

- ☒ 38. Bank statements for each open account (redact all but the last 4 digits of account numbers).
- ☐ 39. Bank reconciliation reports for each account.
- ☒ 40. Financial reports such as an income statement (profit & loss) and/or balance sheet.
- ☐ 41. Budget, projection, or forecast reports.
- ☐ 42. Project, job costing, or work-in-progress reports.

Peak Theory Inc.

MOR Section 1. Questionnaire

Exhibit A

Response

#3. Have you paid all of your bills on time?

We have unpaid creditors and are accruing legal and professional fees related to the bankruptcy.

#4. Did you pay your employees on time?

The only employee is the owner and he hasn't been paid in the last 6 months.

Exhibit B

Response

#10. Do you have any bank account open other than the DIP accounts?

There are 3 Chase accounts the bank transacted analysis charges and 1 Mercury bank account with no activity. DIP account are currently being created.

Peak Theory Inc.	
Balance Sheet	30-Nov-22
Assets	
Cash	\$ -
Intangible Asset	\$ 656,753
Inventory	\$ 68,992
Other Assets	\$ -
TOTAL ASSETS	\$ 725,745
Liabilities	
Accounts Payable / Credit Cards	
Payable	\$ 3,417,016
Accrued Expense	\$ 100,409
Clearbanc Payable	\$ 25,439
Divvy Payable	\$ -
Sales Tax Payable	\$ -
Shopify Capital Payable	\$ 49,494
SBA Payable	\$ 10,000
PPP Loan Payable 1st Loan	\$ 145,000
PPP Loan Payable 2nd Loan	\$ 554,087
Short Term Loan	\$ 532,500
Long Term Liabilities	\$ -
TOTAL LIABILITIES	\$ 4,833,945
Equity	
Opening Balance	\$ -
Preferred Stock	\$ 17,316,197
Retained Earnings	\$ (20,122,217)
Net Income	\$ (1,302,179)
TOTAL EQUITY	\$ (4,108,200)
TOTAL LIABILITIES AND EQUITY	\$ 725,745

-

Peak Theory Inc.	Nov 2022
Income Statement	
Income	\$ -
Amazon Sales	\$ -
Pop Up Shops	\$ -
Shopify	\$ -
Other Income	\$ -
Wholesale Revenue	\$ -
Total Income	
Cost of Goods Sold	
Gross Profit	\$ -
Animation Team	
B2B Expense	
Bank Charges & Fees	\$ -
Content Expense	
Amazon Referral Fees	
E-Comm Expenses	
Marketing	
Fees	
Interest Expense	
Misc. Expense	
Office Expense	
Operations	
Payroll Expense	
Photography Expense	
Professional Services	
Rent & Lease	
Research & Development	
Travel Expense	
Website & Technology	
Total Expenses	\$ -
Net Operating Income	\$ -
Other Expense / PY Adjustments	\$ -
Write-Off of Inventory	\$ -
Net Income	\$ -



KeyBank
P.O. Box 93885
Cleveland, OH 44101-5885

██████████ 8030

T 65 00000 R EM T1

PEAK THEORY INC
ZACHARY I PARK
CASE # 22-23480
3030 S 3380 E
SALT LAKE CITY UT 84109-4225

Questions or comments?

Call our Key Business Resource Center
1-888-KEY4BIZ (1-888-539-4249)

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Access your available accounts, transfer funds and view your transactions right from your PC.

KeyBank Basic Business Checking ██████████ 8030

PEAK THEORY INC
ZACHARY I PARK
CASE # 22-23480

Beginning balance 11-23-22	\$0.00
Ending balance 11-30-22	\$0.00

Fees and charges

Date		Quantity	Unit Charge	
11-30-22	Paper Statement Fee	1	3.00	-\$3.00
11-30-22	Refund Paper Statement Fee	1	3.00	+\$3.00
	Fees and charges this period			\$0.00

Account messages

Updates have been made to your Deposit Account Fees and Disclosures

We've continued to simplify our overdraft terms. Visit key.com/odchanges to learn more.

We've modified one of our fees. Here's what has changed:

Legal Order Processing Fee - Formerly known as Litigation Fee or Garnishment Fee, this charge is for processing court orders (e.g., Garnishments, Levies, or Delinquent Child Support Orders). Previously, this fee amount was \$50, \$75 or \$100 depending on the state where you opened your account. We've updated this fee amount to be up to \$100 based on multiple variables.

IN CASE OF ERROR OR QUESTIONS ABOUT YOUR ELECTRONIC TRANSFERS:



JPMorgan Chase Bank, N.A.
P O Box 182051
Columbus, OH 43218 - 2051

November 01, 2022 through November 30, 2022

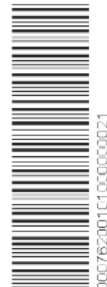
Account Number: [REDACTED] 6835

Customer Service Information

If you have any questions about your statement, please contact your Customer Service Professional.

00007620 WBS 703 211 33522 NNNNNNNNNN 1 000000000 C1 0000

PEAK THEORY INC.
2034 ARMACOST AVE
LOS ANGELES CA 90025



Commercial Checking With Interest Summary

	Number	Market Value/Amount	Shares
Opening Ledger Balance		\$0.00	
Deposits and Credits	0	\$0.00	
Withdrawals and Debits	0	\$0.00	
Checks Paid	0	\$0.00	
Ending Ledger Balance		\$0.00	
Rate(s):	11/01 to 11/30 at 0.45%		

Your service charges, fees and earnings credit have been calculated through account analysis.

* Annual Percentage Yield Earned - the percentage rate earned if balances remain on deposit for a full year with compounding, no change in the interest rate and all interest is left in the account.

Please examine this statement of account at once. By continuing to use the account, you agree that: (1) the account is subject to the Bank's deposit account agreement, and (2) the Bank has no responsibility for any error in or improper charge to the account (including any unauthorized or altered check) unless you notify us in writing of this error or charge within sixty days of the mailing or availability of the first statement on which the error or charge appears.

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JPMorgan Chase Bank, N.A.
P O Box 182051
Columbus, OH 43218 - 2051

December 01, 2022 through December 30, 2022

Account Number: [REDACTED] 3086

CUSTOMER SERVICE INFORMATION

If you have any questions about your statement, please contact your Customer Service Professional.

00001658 DDA 703 212 36522 NNNNNNNNNN 1 000000000 80 0000

PEAK THEORY INC.
2034 ARMACOST AVE
LOS ANGELES CA 90025-6113



CHECKING SUMMARY

Commercial Checking

	INSTANCES	AMOUNT
Beginning Balance		\$0.00
Ending Balance	0	\$0.00

Your service charges, fees and earnings credit have been calculated through account analysis.

IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC FUNDS TRANSFERS:

Call us at 1-866-564-2262 or write us at the address on the front of this statement immediately if you think your statement or receipt is incorrect or if you need more information about a transfer listed on the statement or receipt.

For personal accounts only: We must hear from you no later than 60 days after we sent you the FIRST statement on which the problem or error appeared. Be prepared to give us the following information:

- Your name and account number;
- A description of the error or the transaction you are unsure about, and why you think it is an error or want more information; and
- The amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days (or 20 business days for new accounts) to do this, we will credit your account for the amount you think is in error so that you will have use of the money during the time it takes us to complete our investigation.

For business accounts, see your deposit account agreement or other applicable agreements that govern your account for details.

IN CASE OF ERRORS OR QUESTIONS ABOUT NON-ELECTRONIC FUNDS TRANSFERS: Contact us immediately if your statement is incorrect or if you need more information about any non-electronic funds transfers on this statement. For more details, see your deposit account agreement or other applicable agreements that govern your account.

JPMorgan Chase Bank, N.A. Member FDIC



December 01, 2022 through December 30, 2022

Account Number: [REDACTED] 3086

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November 2022 statement
November 1–November 30, 2022 (30 days)
All dates in UTC.

Peak Theory Inc.

1601 North Sepulveda Boulevard, #509
Manhattan Beach, CA 90266

EIN ••0504

Account details	
Checking account	9076
Routing number	084106768

Account activity overview	
Beginning balance	\$0.00
Total withdrawals	\$0.00
Total deposits	\$0.00
Statement Balance	\$0.00

[All Transactions /](#)

Date (UTC)	Description	Trx Type	Amount	End of Day Balance
Total				\$0.00



JPMorgan Chase Bank, N.A.
P O Box 182051
Columbus, OH 43218 - 2051

November 01, 2022 through November 30, 2022

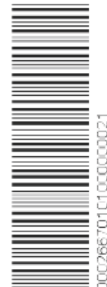
Account Number: [REDACTED] 3796

Customer Service Information

If you have any questions about your statement, please contact your Customer Service Professional.

00002667 WBS 703 211 33522 NNNNNNNNNN 1 000000000 C1 0000

PEAK THEORY INC.
2034 ARMACOST AVE
LOS ANGELES CA 90025



Commercial Checking Summary

	Number	Market Value/Amount	Shares
Opening Ledger Balance		\$0.00	
Deposits and Credits	0	\$0.00	
Withdrawals and Debits	0	\$0.00	
Checks Paid	0	\$0.00	
Ending Ledger Balance		\$0.00	

Your service charges, fees and earnings credit have been calculated through account analysis.

* Annual Percentage Yield Earned - the percentage rate earned if balances remain on deposit for a full year with compounding, no change in the interest rate and all interest is left in the account.

Please examine this statement of account at once. By continuing to use the account, you agree that: (1) the account is subject to the Bank's deposit account agreement, and (2) the Bank has no responsibility for any error in or improper charge to the account (including any unauthorized or altered check) unless you notify us in writing of this error or charge within sixty days of the mailing or availability of the first statement on which the error or charge appears.

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